

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$
 Certified Fee

To
 (Endor) Michael Brose, Plant Manager
 Restr North Pole Refinery
 (Endor) Flint Hill Resources Alaska, LLC
 Total 1100 H & H Lane
 Sent North Pole, Alaska 99705

Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

RCRA Records -
 This should be
 in 5f not 4a.
 Kim Ogle

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael Brose, Plant Manager
 North Pole Refinery
 Flint Hill Resources Alaska, LLC
 1100 H & H Lane
 North Pole, Alaska 99705

2. Article Number
 (Transfer from service label)

7013 1710 0002 3980 1393

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

6-7-14

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

JUN - 4 2014

OFFICE OF
COMPLIANCE AND ENFORCEMENT

AKD 0701
6-4-14
4a
58

Reply To: OCE-127

**FOR SETTLEMENT PURPOSES ONLY / PRIVILEGED AND CONFIDENTIAL
COMMUNICATION**

Certified Mail Return Receipt Requested

Mr. Michael Brose
Flint Hills Resources Alaska, LLC
Vice President of Alaska Operations
North Pole Refinery
1100 H & H Lane
North Pole, Alaska 99705

Re: Opportunity to Enter into Pre-Filing Settlement Negotiations and Notice of Intent to File
Complaint for Violations of the Resource Conservation and Recovery Act

Dear Mr. Brose:

The U.S. Environmental Protection Agency (EPA) has identified violations of the Resource Conservation and Recovery Act (RCRA) by Flint Hills Resources Alaska, LLC. (Respondent) at its North Pole Refinery in North Pole, Alaska. These violations occurred between June 19, 2013, and June 22, 2013, and arose out of the mis-management of spent groundwater remediation pre-filters that contained iron sulfide. These pre-filters self-ignited causing two fires at the North Pole Refinery. The purpose of this letter is to inform you of EPA's intent to initiate an action for civil penalties for these violations. By this letter, we wish to provide you with an opportunity to discuss this matter with EPA prior to the filing of a complaint. A summary of the violations identified by EPA is enclosed with this letter.

RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes EPA to file a complaint for penalties of up to \$37,500 per day for each RCRA violation. It is EPA's view that a total penalty of \$101,600 is an appropriate settlement amount to resolve the alleged violations. This amount was determined in accordance with the factors set forth in Section 3008 of RCRA and in EPA's RCRA Civil Penalty Policy, a copy of which has been enclosed for your reference.

A "Summary of Alleged Violations and Proposed Settlement Penalty," which provides information about EPA's allegations in this matter, as well as an explanation of EPA's proposed settlement penalty, is enclosed. EPA's "Small Business Resources Information Sheet," which provides information on compliance assistance that may be helpful to you, is also enclosed.

In general, EPA favors pre-filing discussions, as they help ensure that we have all relevant information which can lead to resolution of enforcement matters without resorting to the time and expense of litigation. If we are able to reach a settlement, no complaint would be filed; instead, we would resolve

FILE COPY

the case with an administrative consent agreement and final order. Once a consent agreement and final order is signed by all parties, EPA generally issues a press release announcing the settlement.

If Flint Hills Resources Alaska and EPA do not reach a settlement within 90 days of receipt of this notice, EPA will either file an administrative complaint and the case will be assigned to an administrative law judge or refer the matter to the Department of Justice for filing in federal district court. EPA reserves the right to seek the maximum allowable penalty in litigation of this case should Flint Hills Resources Alaska and EPA fail to reach a settlement in the time period allotted.

To reach settlement within 90 days, we will need to begin pre-filing negotiations within 30 days. If you wish to set up an initial meeting to discuss this matter, please contact Shirin Gallagher in the Office of Regional Counsel at (206) 553-4194 **within 14 days of receipt of this notice**. EPA is willing to meet with you at our Seattle office or by conference call. If we do not hear from you within 14 days, EPA intends to initiate a formal enforcement action unilaterally.

Thank you for your prompt attention to this important matter.

Sincerely,

Scott E. Downey

Scott E. Downey, Manager
Air and RCRA Compliance Unit

Enclosures:

1. RCRA Civil Penalty Policy
2. Summary of Alleged Violations and Proposed Settlement Penalty
3. Small Business Resources Information Sheet

Summary of Alleged Violations and Proposed Settlement Penalty
Flint Hills Resources Alaska, LLC (Respondent)

Alleged Violations

COUNT 1: Failure to Make a Hazardous Waste Determination

Pursuant to 40 C.F.R. § 262.11, persons who generate solid wastes are required to determine if that waste is hazardous. EPA alleges that Respondent failed to make a determination that spent groundwater remediation pre-filters generated at its North Pole, Alaska, Refinery (Facility) were hazardous waste. The waste stream was generated on June 19, 2013, and exhibited the characteristics of ignitability and reactivity. The waste material self-ignited and caused two fires at the Facility evidencing these characteristics. Respondent's failure to make a determination of the status of the waste stream at the point of its generation violated 40 C.F.R. § 262.11.

COUNT 2: Storage of Hazardous Waste at the Facility without a Permit or Interim Status

Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person who treats, stores, or disposes of hazardous waste must have a permit or interim status. 40 C.F.R. § 262.34(a) and (b) provide that a generator may accumulate hazardous waste on-site for up to 90 days without a permit or interim status, provided that the generator complies with specified conditions. Between June 19 and June 22, 2013, Respondent failed to manage a hazardous waste (spent groundwater pre-filters) in accordance with several of those conditions. Namely, Respondent failed to: (1) store its hazardous waste in a container that must always be closed during storage, except when it is necessary to add or remove waste, as required by 40 C.F.R. § 262.34(a)(1) and 40 C.F.R. § 265.173(a); (2) clearly and visibly mark the date of each period of hazardous waste accumulation on its hazardous waste container as required by 40 C.F.R. § 262.34(a)(2); (3) store hazardous waste at the Facility in a container labeled with the words "Hazardous Waste" as required by 40 C.F.R. § 262.34(a)(3); and (4) maintain and operate its facility in such a manner as to minimize the possibility of a fire, as required by 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.31. Accordingly, Respondent violated the requirements of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).

Proposed Settlement Penalty

The following table notes EPA's determination, for settlement purposes, of the appropriate categorization of the "potential for harm" and "extent of deviation" for each violation alleged and the corresponding proposed civil penalty amount. In this instance, EPA concludes that Respondent was negligent in its failure to manage its spent groundwater pre-filters as hazardous waste when it had knowledge that the waste was both ignitable and reactive and had self-ignited on at least one other occasion in 2011. EPA has therefore increased the multi-day component of the penalty calculation for Count 2 by 25 percent.

#	Count	Potential for Harm	Extent of Deviation	Gravity	Adjustment Factors	Economic Benefit	Total
1	Failure to make a hazardous waste determination	Major	Major	\$37,500	--	--	\$37,500
2	Storage of hazardous waste without a permit or interim status	Major	Major	\$58,770 ¹	\$5,318	--	\$64,088
Total				\$96,270 ²	\$5,318	--	\$101,600

¹ For Count 2, a multi-day penalty was applied. The penalty for day 1 was \$37,500, with an additional penalty of \$21,270 (\$7,090 x 3) for days 2-4. A 25 percent increase to the multi-day penalty was applied to the multi-day component of the penalty. The total gravity-based penalty for this count therefore is \$64,088.

² Pursuant to the memorandum from Grant Nakayama, dated December 29, 2008, the total applicable gravity-based penalty for all counts was rounded to the nearest unit of \$100.

Total Penalty Calculation Amount: \$101,600

5. Prefiling Letter*

(letter inviting the respondent to negotiate a settlement prior to filing a formal Complaint)

Case Name: In the Matter of Flint Hills Resources Alaska, LLC

City/State: North Pole, Alaska

Title:	Compliance Officer	ORC Attorney	ORC Unit Manager	Regional Counsel
Name:	Chu	Gallagher	Matthews	Stern
Initials:	XC (via email) by SIG	SIG	mm	AS
Date:	5/27/14	5/27/14	5/28/2014 WadeB	6/1/14

If document is included, check YES. If not, check NO and explain.

YES NO EXPLAIN

Document for signature/concurrence

☒ ☐

Penalty justification memo

☒ ☐

Allegations ("guts" of complaint, CAFO)

☒ ☐

Nationally significant issues form
(completed by ORC)

☐ ☒

Not Applicable- No NSIs

Is this facility located in Indian country and/or a Tribal facility (i.e., owned or controlled by a federally recognized Indian tribe)?

☐ YES ☒ NO

Does this action potentially affect Tribal interests?

☐ YES ☒ NO

If YES, fill out and attach Addendum A: Enforcement Actions Involving Indian Tribes.

mw6-3-14.

RETURN package to COMPLIANCE OFFICER for mailing.

* For documents to be signed by an OCE manager, attach a completed OCE Correspondence Action Request to this checklist.

10-1-2012 Version

MEMORANDUM

SUBJECT: Penalty Justification for RCRA Violations Alleged Flint Hills Resources Alaska, LLC (AKD000850701) for Purposes of Settlement

FROM: Xiangyu Chu, Compliance Officer

Thru: Scott Downey, Manager, Region 10, Air/RCRA Compliance Unit

TO: Shirin Gallagher, Attorney, Region 10, Office of Regional Counsel

This memorandum is to provide a penalty justification for RCRA violations alleged against the Flint Hills Resources, Alaska – North Pole Refinery (FHR) in accordance with the RCRA Civil Penalty Policy (RCPP). The violations and justification for penalties associated with those violations are described below.

SUMMARY OF TOTAL PROPOSED PENALTY

#	Count	Potential for Harm	Extent of Deviation	Gravity	Adjustment Factors	Economic Benefit	Total
1	Failure to make a hazardous waste determination groundwater pre-filters containing iron sulfide scale	Major	Major	\$37,500		--	\$37,500
2	Storage of Hazardous Waste at the Facility without a Permit or Interim Status	Major	Major	\$58,770	\$5,318	--	\$64,088
Total							\$101,600¹

² Pursuant to the memorandum from Grant Nakayama, dated December 29, 2008, the total applicable gravity-based penalty for all counts was rounded to the nearest unit of \$100.

VIOLATIONS

Count 1. Failure to make a hazardous waste determination

BACKGROUND:

40 C.F.R. § 262.11 requires that a person who generates a solid waste, as defined in 40 C.F.R. § 261.2, must determine if that waste is a hazardous waste. The generator may make this determination based on analytical testing or by applying process knowledge in light of the materials or process used. If the waste is determined to be a hazardous waste, the generator must follow the requirements pertaining to the management of that waste. FHR failed to make a hazardous waste determination for spent groundwater pre-filters containing iron sulfide as discussed below.

On June 19, 2013, Respondent conducted groundwater remediation activities at the North Pole Refinery (Facility) that caused the generation of spent groundwater pre-filters containing iron sulfide. The spent groundwater pre-filters were disposed of by means of placement in a "roll off" container. On June 20, 2013, at 12:20 am and June 22, 2013, at 8:49 pm the spent pre-filters ignited and caused a fire inside the roll off container.

EPA alleges that FHR failed to make a hazardous waste determination when the spent groundwater pre-filters were generated on June 19, 2013. EPA alleges that FHR should have known that the spent groundwater pre-filters exhibited the characteristics of ignitability and reactivity and should have been determined to have been hazardous waste. FHR has documentation of sampling of the spent groundwater pre-filters in 2010, though this analysis evaluated only total RCRA metals content (not TCLP analysis) and benzene and did not include a determination related to the ignitability or reactivity of the waste in support of its conclusion that the waste was non-hazardous. In 2011, spent groundwater pre-filters generated at the facility self-ignited and caused a fire. FHR subsequently did not begin designating the materials as a hazardous waste. Instead it adopted a policy that the pre-filters should be individually examined for large amounts of iron scale (iron sulfide) buildup and where a large accumulation of scale was observed, the pre-filters should be sent away for analysis along with a warning that the "sample might be pyrophoric and spontaneously combust during testing."²

EPA alleges that FHR failed to make a hazardous waste determination when the spent-groundwater pre-filters were generated on June 19, 2013, and that it failed to properly manage the materials as a hazardous waste in accordance with the requirements of 40 C.F.R. § 262.34(a) from at least June 19, 2013, until June 22, 2013, at which time FHR placed the waste in closed 55-gallon drums containing water to prevent the waste from self-igniting again. Currently the Facility is "conservatively managing" the spent groundwater pre-filters as a hazardous waste, identifying it with both D001 and D003 waste codes. It is unclear from their response to EPA's information request whether they have affirmatively determined that the materials are a hazardous waste. Sampling results from the company's analysis of the waste generated on June 18, 2013, only evaluated the material for metals and benzene.

EPA alleges that the spent groundwater pre-filters generated on June 19, 2013, exhibit the hazardous characteristics of ignitability (D001) and reactivity (D003) as evidenced that the materials spontaneously self-ignited when disposed of in an open roll off container in which the waste was exposed to the air. The spent groundwater pre-filters are ignitable and reactive because "a representative sample of [the]

² See FHR Information Request Response, Attachment 2. This policy document also states that pre-filters will be periodically tested for waste characterization, but the results of any such sampling was not provided to EPA.

non-liquid waste is capable under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard” and they are “normally unstable and readily undergoes violent change without detonating.” See definitions at 40 C.F.R. § 261.21(a)(2) and 40 C.F.R. § 261.23(a)(1).

Penalty Summary Table:

Count 1. Failure to make a hazardous waste determination		
A. Gravity Based Penalty Potential for Harm: Major Extent of Deviation: Major Top of the Penalty Matrix Cell	\$37,500	Comment 1A
B. Multi-day Penalty None	0	Comment 1B
Total Gravity Based Penalty	\$37,500	
C. Adjustment Factors	0	Comment 1C
• Good Faith:	--	
• Willfulness/Negligence:	--	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	\$37,500	
D. Economic Benefit	0	Comment 1D
Total Penalty	\$37,500	

Comment 1A.

Potential for Harm: Major. In accordance with the RCPP, a major potential for harm means that “(1) the violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or (2) the actions have or may have a substantial adverse effect on the statutory or regulatory purposes or procedures for implementing the RCRA program.” RCPP, p. 15.

Failure to make a hazardous waste determination increases the likelihood that hazardous waste will be improperly managed as non-hazardous waste. In this case, FHR failed to determine if the spent groundwater remediation pre-filters containing iron sulfide were ignitable and reactive hazardous waste. The lack of a hazardous waste determination resulted in the iron sulfide containing paste that was on the groundwater filters to self-ignite as the paste dried out. The resulting fire was substantial enough that the local fire department was called to assist the facility in extinguishing the fire. After the fire was extinguished the debris was left in the original roll off container and a second fire fueled by the same filters started a few days later.

Making a hazardous waste determination is a key step that is necessary to determine what requirements are applicable to the waste, and to ensure that the waste will be managed in a manner that corresponds to the environmental and human health risks that it presents. FHR’s failure to make a hazardous waste determination for the spent groundwater pre-filters containing iron sulfide presented a substantial potential for harm to human health and the environment and to the implementation of the RCRA program. The potential for harm is major and not moderate, because when FHR failed to make a hazardous waste determination, it did not manage the hazardous waste in accordance with the significant

level of risk of harm to human health and the environment that it posed. Two fires occurred because the waste had not been adequately characterized. Furthermore, this violation resulted in failure to comply with other regulations that would have protected human health and the environment. This violation had a substantial adverse effect on RCRA program implementation.

Extent of Deviation: Major. In accordance with the RCPP, a major extent of deviation is when the violator deviates from requirements of the statute or regulation to such an extent that most (or important aspects) of the requirements are not met, resulting in substantial noncompliance. RCPP, p. 17. One of the fundamental requirements in the proper management of hazardous waste is identifying those solid wastes that are subject to hazardous waste management requirements. By failing to perform a hazardous waste determination at the point of generation on the spent groundwater pre-filters containing iron sulfide when removed from the remediation system, FHS deviated from requirements of the RCRA regulations to such an extent that FHR did not treat the materials as subject to RCRA hazardous waste requirements. Furthermore, all of FHR's previous evaluations of the spent groundwater pre-filters appear to have been inadequate because they failed to evaluate the waste's ignitability and reactivity characteristics, instead analyzing only metal and benzene content. A fire caused by the self-ignition of the spent groundwater pre-filters occurred in 2011 and FHR recognized that iron sulfides, which are pyrophoric, were present in the waste stream. FHR knew the hazard associated with the waste but failed to make a hazardous waste determination which consequently resulted in two fires.

Selection of the exact penalty amount: According to the RCPP, the major/major penalty cell has a penalty range of \$28,330 – 37,500. Given the seriousness of the violation, the potential for release of a hazardous waste due to this violation, and the size and sophistication of FHS, a penalty at the top of the matrix cell was selected: \$37,500.

Comment 1B.

Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties are assessed for days 2-180 for all violations designated as major potential for harm/major extent of deviation. However, making a hazardous waste determination is a one-time activity that is required at the point of generation each time a new waste is generated or a waste is treated, therefore a multi-day penalty for this violation is not warranted.

Comment 1C.

Degree of Willfulness and or Negligence for Count 1B: The RCPP allows for an upward adjustment to address willfulness and/or negligence. The factors that should be considered include: how much control the violator had over the events constituting the violation; whether the violator took reasonable precautions against the event constituting the violation; and whether the violator knew or should have known of the hazards associated with the conduct or violation of the legal requirement. There is evidence to support an upward adjustment due to this factor but since we are already seeking the statutory maximum for this violation, this adjustment is not included in the gravity based penalty.

Other Adjustment Factors: No other adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 1D.

Economic Benefit: In 2010 and 2013 FHR sent samples of the spent groundwater pre-filters for metals and benzene analysis, and FHR has documented its awareness that the material is pyrophoric. FHR was

capable of making a hazardous waste determination with the information it had already developed. Therefore, it is not believed to have incurred an economic benefit due to its failure to make a hazardous waste determination.

Count 2. Storage of Hazardous Waste at the Facility without a Permit or Interim Status.

BACKGROUND:

Section 3005 of RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status, and the regulation at 40 C.F.R. § 270.1(c) requires a RCRA permit for the treatment, storage or disposal of any hazardous waste identified or listed in 40 C.F.R. Part 261. Generators of hazardous waste are allowed to accumulate hazardous waste on-site without a permit or interim status for up to 90 days, provided that they comply with certain conditions set forth in 40 C.F.R. § 262.34.

EPA alleges that FHR failed to comply with several of the conditions necessary to exempt the facility from obtaining a RCRA permit.

First, 40 C.F.R. § 262.34(a)(1), which incorporates by reference the requirements of 40 C.F.R. § 265.173(a), requires that a generator store its hazardous waste in a container that must always be closed during storage, except when it is necessary to add or remove waste.

Second, 40 C.F.R. § 262.34(a)(2) requires that a generator clearly and visibly mark the date upon which each period of accumulation begins for inspection on each container holding a hazardous waste.

Third, 40 C.F.R. § 262.34(a)(3) provides that, while being accumulated on-site, each container storing a hazardous waste be labeled or marked clearly with the words "Hazardous Waste."

Finally, 40 C.F.R. § 262.34(a)(4), which incorporates by reference the requirements of 40 C.F.R. § 265.31, requires a generator of hazardous waste to maintain and operate its facility in such a manner as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

EPA alleges that FHR failed to comply with the four conditions mentioned above from at least June 19, 2013, until June 22, 2013, when it stored spent groundwater pre-filters in a "roll off" container. The roll off container did not feature a lid. Therefore, the hazardous waste was stored in a container that was open at all times to the atmosphere. The roll off container was not labeled with the words "Hazardous Waste" and, therefore, provided no warning that the contents of the container was hazardous. The roll off container was not labeled with a hazardous waste accumulation start date to ensure that the waste was not stored on site for longer than 90 days. Finally, and most importantly, the hazardous waste was not managed by FHR in a manner so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste. The spent groundwater pre-filters were stored in a manner such that they self-ignited on two occasions (on June 20 and again on June 22) before FHR finally removed the hazardous waste from the roll off container and placed it in a sealed barrel with a sufficient quantity of water to prevent the re-ignition of the waste. The June 20 and June 22 fires were significant enough to require a response from the local fire departments, and the emergency responders had no basis to know that the fires had been caused by mis-management of a hazardous waste.

Penalty Summary Table:

Count 2. Storage of Hazardous Waste at the Facility without a Permit or Interim Status		
A. Gravity Based Penalty Potential for Harm: Major Extent of Deviation: Major Middle of the Penalty Matrix Cell	\$37,500	Comment 2A
B. Multi-Day Penalty	\$21,270	Comment 2B
Total Gravity Based Penalty	\$58,770	
C. Adjustment Factors		Comment 2C
• Good Faith:	--	
• Willfulness/Negligence:	+25% (\$5,318.)	
• History of Noncompliance:	--	
• Other Unique Factors:	--	
Total Base Penalty	\$64,088	
D. Economic Benefit	--	Comment 2D
Total Penalty	\$64,088	

Comment 2A.

Potential for Harm: Major. In accordance with the RCPP, a major potential for harm means that “(1) the violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to hazardous waste or constituents; and/or (2) the actions have or may have a substantial adverse effect on the statutory or regulatory purposes or procedures for implementing the RCRA program.” RCPP, p. 15.

The potential for harm is major and not moderate because FHR failed to comply with container management standards over a four day period, resulting in two fires at the facility. The fires were significant enough that the local fire department was called in to help extinguish both fires, and presented a substantial risk of human and environmental exposure to hazardous waste. The hazardous waste was stored in an open container that exacerbated the potential for human and environmental exposure, and the lack of labeling of the containers put the emergency responders and facility employees at significant risk of harm because they had no warning of the ignitable and reactive characteristics of the waste inside.

By failing to manage hazardous waste in a such a way as to minimize the possibility of a fire, prevent a sudden or non-sudden release of hazardous waste or hazardous constituents, and failing to accumulate hazardous waste without meeting the conditions for operating without a permit or interim status, FHR failed to achieve the fundamental goal of RCRA, that is, to handle wastes in a safe and responsible manner.

Extent of Deviation: Major. The extent of deviation is major and not moderate because FHR deviated from requirements of the RCRA regulations to such an extent that several aspects of the requirements necessary to ensure adequate containment of hazardous waste, and to provide information about the presence of hazardous waste, were not met. FHR did not manage the waste in accordance with any of the applicable hazardous waste management requirements. During the month of June, 2013, the

Respondent generated 945 lbs of spent groundwater remediation pre-filters. This is a significant quantity of a hazardous waste that was generated in just one month that was likely mis-managed without complying with the regulatory conditions necessary to protect human health and the environment.

Selection of the exact penalty amount: According to the RCPP, the major/major penalty cell has a penalty range of \$28,330 – 37,500. Given the seriousness of the violation and the size and sophistication of FHS, a penalty at the top of the matrix cell was selected: \$37,500. The penalty is selected because FHR failed to meet fundamental conditions of the RCRA program which resulted in two fires, each of which presented a serious potential for harm to human health and the environment.

Comment 2B.

Multi-day Penalty: According to the RCRA Civil Penalty Policy, multi-day penalties should be assessed for days 2-4 for all continuing violations such as those alleged here, that are designated as major potential for harm/major extent of deviation. A multi-day penalty is warranted for the period between when the hazardous waste was generated until FHR began managing the waste in compliance with RCRA (June 22, 2013). Given the serious consequences of violations, as discussed above, a \$7,090 per day multi-day penalty is selected for a total of 3 days which equals \$21,270.

Comment 2C.

Degree of Willfulness and or Negligence for Count 2: The RCPP allows for an upward adjustment to address willfulness and/or negligence. The factors that should be considered include: how much control the violator had over the events constituting the violation; whether the violator took reasonable precautions against the event constituting the violation; and whether the violator knew or should have known of the hazards associated with the conduct or violation of the legal requirement. There is evidence to support an upward adjustment due to this factor. A similar fire occurred in 2011 and a subsequent analysis determined that spent groundwater pre-filters that contain a large amount of iron scale or sand at the point of generation may result in an increase of iron sulfides which are pyrophoric and may spontaneously ignite. The Respondent knew the hazards associated with the solid waste but still failed to prevent and minimize the possibility of fires at the facility and failed to accumulate the filters in containers that met the conditions that would allow FHR to avoid a permit. A 25% upward adjustment is appropriate for this violation under these circumstances.

Other Adjustment Factors: No other adjustment factors were applied to the penalty. At the time of the penalty calculation, EPA had no information to indicate that an adjustment to the penalty regarding good faith efforts to comply, history of noncompliance, ability to pay, or other unique factors would be appropriate.

Comment 2D.

Economic Benefit: The Agency considers the least expensive means of compliance when calculating economic benefit, and in this instance it would be to comply with the waste management conditions necessary to qualify for an exemption from the Part 270 permitting requirement. The least expensive way for FHR to minimize the possibility of a fire is to place the filters in closed containers to which water has been added. The least expensive way to meet container management standards would be to obtain an adequate container and use a marker to write the words "Hazardous Waste" on the containers, along with the accumulation start date. The cost of a marker is approximately \$5. It would have likely taken an Environmental Coordinator approximately half an hour to label, date, and close the containers. According to the 1997 Manual for Estimating Costs for the Economic Benefit of RCRA Noncompliance, the labor rate for an Environmental Coordinator at that time was \$50/hour (or \$25/half

an hour). Because the cost is expected to be less than \$200, no economic benefit was calculated for this count.

ALLEGATIONS

40 C.F.R. § 260.10 defines a "person" as an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

40 C.F.R. § 261.2(a)(1), defines "solid waste" as any discarded material that is not excluded under 40 C.F.R. § 261.4(a) or that is not excluded by a variance granted under 40 C.F.R. §§260.30 and 260.31 or that is not excluded by a non-waste determination under 40 C.F.R. §§260.30 and 260.34.

40 CFR § 261.3 defines "hazardous waste" as a "solid waste" as defined in 40 C.F.R. § 261.2 that has not been excluded from regulation as a hazardous waste under § 261.4(b) and which meets any of the criteria identified in 40 C.F.R. § 261.3(a)(2).

40 CFR § 260.10 defines "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

Flint Hills Resources Alaska, LLC (Respondent) is an Alaska limited liability company doing business in the state of Alaska.

Respondent is a "person" as that term is defined by RCRA Section 1004(15), 42 U.S.C. § 6903(15).

At all times relevant to the allegations set forth herein, Respondent has been the "owner" and "operator" of the facility located at 1100 H & H Lane, North Pole, Alaska (the "Facility"), as those terms are defined at 40 C.F.R. § 260.10.

The Facility is a petroleum refinery that refines crude oil to produce petroleum derivatives including gasoline. Groundwater remediation activities, among other processes at the Facility, result in the generation of solid and hazardous wastes.

Respondent's Facility is a "generator" as defined by 40 C.F.R. § 260.10.

At all times relevant to the allegations set forth herein, Respondent's Facility was not a permitted treatment, storage, disposal facility, nor an interim status facility under Section 3005 of RCRA, 42 U.S.C. § 6925.

VIOLATIONS

COUNT 1: Failure to Make a Hazardous Waste Determination.

40 C.F.R. § 262.11 requires a person who generates solid waste to determine if that waste is a hazardous waste using the methods provided in 40 C.F.R. § 262.11(a)-(d).

On June 19, 2013, Respondent conducted groundwater remediation activities at the Facility that caused the generation of spent groundwater pre-filters containing iron sulfide (hereafter "spent groundwater pre-filters").

At the time of the generation of the spent groundwater pre-filters, Respondent had not made a hazardous waste determination for the waste in accordance with the methods specified at 40 C.F.R. § 262.11(a)-(d).

40 C.F.R. § 261.21(a)(2) provides that a solid waste exhibits the characteristic of ignitability if a representative sample of a non-liquid waste is capable under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

40 C.F.R. § 261.23(a)(1) provides that a solid waste exhibits the characteristic of reactivity if a representative sample of the waste is normally unstable and readily undergoes violent change without detonating.

The spent groundwater pre-filters generated on June 19, 2013, subsequently self-ignited and caused two fires that burned vigorously and persistently, thereby exhibiting the characteristic of ignitability (as defined at 40 C.F.R. § 261.21) and reactivity (40 C.F.R. § 261.23(a)(1)). The same type of spent pre-filter waste was generated at the facility had self-ignited and caused a fire in 2011, exhibiting the characteristic of ignitability.

Respondent's failure to determine that the spent groundwater pre-filters generated at the Facility were hazardous waste is a violation of 40 C.F.R. § 262.11.

COUNT 2: Storage of Hazardous Waste without a Permit or Interim Status

Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c) require that any person who treats, stores, or disposes of hazardous waste have a permit or interim status.

40 C.F.R. § 262.34(a) provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided that the generator complies with the requirements identified at 40 C.F.R. § 262.34(a)(1)-(4) or 40 C.F.R. § 262.34(b).

40 C.F.R. § 262.34(a)(1), which incorporates by reference the requirements of 40 C.F.R. § 265.173(a), requires that a generator store its hazardous waste in a container that must always be closed during storage, except when it is necessary to add or remove waste.

From June 18, 2013, until at least June 22, 2013, Respondent stored spent groundwater pre-filters, a hazardous waste, inside a roll off container which did not have a lid and was incapable of being closed.

Respondent failed to store a hazardous waste in a container that was always closed in violation of 40 C.F.R. § 262.34(a)(1) and 40 C.F.R. § 265.173(a).

40 C.F.R. § 262.34(a)(2) requires that a generator clearly and visibly mark the date upon which each period of accumulation begins for inspection on each container holding a hazardous waste.

From June 18, 2013, until at least June 22, 2013, Respondent stored spent groundwater pre-filters, a hazardous waste, inside a roll off container which was not marked with a hazardous waste accumulation start date.

Respondent failed to clearly and visibly mark the date of each period of hazardous waste accumulation on its hazardous waste container in violation of 40 C.F.R. § 262.34(a)(2).

40 C.F.R. § 262.34(a)(3) provides that, while being accumulated on-site, each container storing a hazardous waste be labeled or marked clearly with the words "Hazardous Waste."

From June 18, 2013, until at least June 22, 2013, Respondent stored spent groundwater pre-filters, a hazardous waste, inside a roll off container which was not marked with the words "Hazardous Waste."

Respondent stored a hazardous waste at the facility without labeling the waste's container with the words "Hazardous Waste" as required by 40 C.F.R. § 262.34(a)(3).

40 C.F.R. § 262.34(a)(4), which incorporates by reference the requirements of 40 C.F.R. § 265.31, requires a generator of hazardous waste to maintain and operate its facility in such a manner as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

On June 20, 2013, and June 22, 2013, Respondent maintained and operated its facility in such a manner that spent groundwater pre-filters, a hazardous waste, were exposed to oxygen and caused fires in the roll-off containers to ignite.

Respondent failed to maintain and operate its facility in such a manner as to minimize the possibility of a fire, as required by 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.31.

Respondent failed to comply with the conditions for the accumulation of hazardous waste at the Facility without a permit or interim status specified at 40 C.F.R. § 262.34(a)(1)-(4) and 40 C.F.R. § 262.34(b). Respondent operated the Facility as a treatment, storage, or disposal facility without a permit or interim status, in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.1(c).